

91-513

Supreme Court, U.S.  
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CASE NO. \_\_\_\_\_

IN THE UNITED STATES SUPREME COURT

FALL TERM, 1991

DELMAS NORTHCUTT, a/k/a D. L.

NORTHCUTT, and LOU NORTHCUTT,

a/k/a MARTHA L. NORTHCUTT,

Petitioners

vs.

FEDERAL LAND BANK OF WICHITA,

a corporation, now Farm Credit Services

PETITION FOR WRIT OF CERTIORARI

TO REVIEW A DECISION ENTERED BY

THE SUPREME COURT OF THE STATE OF OKLAHOMA

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## QUESTIONS PRESENTED FOR REVIEW

The primary and threshold question for review is whether farmers and ranchers were granted private rights under the Agricultural Credit Act of 1987 and have an implied cause of action against the Federal Land Bank to enforce those rights if the Federal Land Bank fails to follow the statutory requirements of the Act as set forth in 12 USCS Sections 2202 et seq. and 7 USCS Sections 5101 - 5105.

Other secondary questions for review are the following:

Do the provisions of the Agricultural Credit Act of 1987 require that qualified lenders under the program complete the required consideration of the loan for restructuring before proceeding with foreclosure in the State Courts? Are qualified lenders required to participate in State Agricultural Loan Mediation programs prior to proceeding with foreclosure in the courts of any state? Was this Petitioner

denied due process under the Fourteenth Amendment when a reviewing state court made findings as to the facts relating to this Act when there was no factual evidence before the Court upon which to make the findings?

## LIST OF PARTIES TO THE PROCEEDING

The list of all parties to the proceeding in the Supreme Court of the State of Oklahoma whose judgment is sought to be reviewed is as follows:

Delmas Northcutt, a/k/a D. L. Northcutt and Lou Northcutt, a/k/a Martha L. Northcutt, Appellants and Petitioners herein, and owners of the farm.

Federal Land Bank of Wichita, a corporation, now Farm Credit Services, Respondent herein which originally filed the foreclosure.

Other defendants who were named in the original foreclosure suit, but who have not been involved in the Appeals are the following Parties who held inferior mortgages, liens, or easements:

First National Bank, Madill, Oklahoma; Glenn Northcutt and Tommye Northcutt; Exchange National Bank & Trust Company of Ardmore, Oklahoma; Acacia Pipeline Corporation, one and the same as Acacia Pipeline Corp.; Natural Gas Pipeline Company of America; Konawa Insurance Company, a corporation; and Gene Embry.

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Petitioners

vs.

FEDERAL LAND BANK OF WICHITA,  
a corporation,

PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT  
OF THE STATE OF OKLAHOMA

To the Honorable Chief Justice and Associate  
Justices of the Supreme Court of the United  
States:

Delmas Northcutt and Lou Northcutt,  
Petitioners herein, pray that a writ of  
certiorari issue to review the judgment of  
the Court of Appeal of the State of Oklahoma,  
Division III, entered in the above-entitled  
cause on February 12, 1991, with certiorari  
denied in the Supreme Court of the Oklahoma  
on June 5, 1991.

OPINIONS BELOW

The Journal Entry of Judgment of the District Court of Marshall County dated February 10, 1989, filed February 14, 1989, from which an appeal was taken is printed in Appendix A hereto, infra, page 50; The opinion of the Court of Appeals of the State of Oklahoma, Division III, Dated February 12, 1991, is reported in Volume 60, No. 26, of the Oklahoma Bar Journal on Page 2028, Appendix A hereto, infra, page 44. The Order in the Court of Appeals of the State of Oklahoma issued on April 3, 1991, denying the Petition for Rehearing is printed in Appendix A, infra, page 60. The Order in the Supreme Court of the State of Oklahoma issued June 5, 1991, denying certiorari is printed in Appendix A hereto, infra, page 61.

#### JURISDICTION

The Judgment of the Court of Appeals of the Supreme Court of the State of Oklahoma, Division III, (Appendix A, infra, page 44) was entered on February 12, 1991.

A timely Petition for Rehearing was denied on April 3, 1991 (Appendix A, *infra*, page 60). A timely Petition for Certiorari in the Supreme Court of the State of Oklahoma was denied on June 5, 1991 (Appendix A, *infra*, page 61). The jurisdiction of the Supreme Court is invoked under 28 USCS §1257 and Rule 10.1(c).

#### STATUTES INVOLVED

This case involves the Agricultural Credit Act of 1987. The applicable statutes as codified are 12 USCS §2201, 12 USCS §2202 and 12 USCS §2202a, and 7 USCS §§5101-5106, which appear in Appendix B, *infra*, Pages 670-71.

This case also involves Section One of the Fourteenth Amendment to the Constitution of the United States. Said section reads as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

No state shall make or force any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny any person within its jurisdiction of equal protection of the laws." [Emphasis Added.]

#### STATEMENT OF CASE

On the 26th day of March, 1986, Respondent herein, The Federal Land Bank of Wichita, now Farm Credit Services, filed a Petition for foreclosure in the District Court of Marshall County, Oklahoma, against Defendants Delmas Northcutt and Lou Northcutt, and other defendants, based upon a promissory note secured by a first real estate mortgage. While the foreclosure suit was pending, the Agricultural Credit Act of 1987 became effective on January 6, 1988. Thereafter, the Northcutts submitted an application to the Federal Land Bank to restructure their loan as provided in the Act, but the Federal Land Bank failed to follow the mandated statutorily prescribed

procedure in processing the Application for restructure and filed its Motion for Summary Judgment before complying with the Act. A Credit Review Committee failed to follow the statutorily prescribed procedure in reviewing the decision rendered by the Federal Land Bank. Further, the Federal Land Bank failed to participate in state sponsored mediation programs as required in the Act.

When the Plaintiff, Federal Land Bank, an institution subject to said Act, filed its Motion for Summary Judgment, Defendants Northcutt responded that the Motion was premature and not proper because Plaintiff had failed to comply with the provisions of the Agricultural Credit Act of 1987 and the Act specifically prohibited any Court from proceeding with foreclosure until there had been compliance with the Act. Defendants alleged that the Plaintiff had failed to perform the required acts relating to restructure of their loan and had failed to

submit to mediation.

At a hearing on the Motion held January 12, 1989, the Trial Court listened to bald assertions and statements by the attorney representing the Federal Land Bank related to compliance by the Federal Land Bank with the statutory procedure. These statements were not supported by any evidence in the record whatsoever and were vehemently denied by the attorney representing the Northcutts. There was no evidence whatsoever presented to the Court at the hearing on the Motion for Summary Judgment to show compliance with the Act.

In determining whether the Plaintiffs have private rights under the Federal Statutes, this Court traditionally applies the four factors set forth in Cort v. Ash, 422 US 66, 95 Sup.Ct. 2080, 45 L.Ed.2d 26 (1975) in determining whether there are private rights and implied causes of action created under Federal Statutes. The first

is whether the party is clearly a person for whose special benefit these statutes were enacted. The statutes clearly reflect the Petitioners are persons for whose benefit the statute was enacted. The second factor is whether there is any indication of a legislative intent to create a special private right or remedy. The legislative history of the 1987 Act contains explicit indication of Congress' intent to provide a private cause of action and in addition explains why the Act is itself silent on the issue. Records of the Legislative process as discussed below in detail reveal that both the House and Senate intended to provide a cause of action for Petitioners' class, farmers and ranchers. The third criteria is whether a private right and cause of action is consistent with the purpose of the Act. Clearly, a private right and cause of action is consistent with the purpose of the Act because these Petitioners have no effective

recourse regarding the mandated procedures absent private rights and a cause of action to enforce their rights under the Act. The final factor is whether the cause of action is one traditionally relegated to state law in an area basically the concern of the state so that it would be inappropriate to infer a cause of action based solely on Federal law. The well-being of the American agricultural institutions and the soundness of the Agricultural Credit System are clearly of Federal concern and not one traditionally relegated to state law.

The Trial Court in addressing the fundamental question on appeal ruled as a matter of law the Defendants "were afforded no implied cause of action under the Agricultural Credit Act of 1987" and that, therefore, the Defendants were not entitled to judicial relief under the Act, regardless of whether the Plaintiff had failed to comply with the requirements of the Act giving



certain rights to borrowers, and further that there were no substantial controversies as to material facts relating to the note and mortgage. Plaintiff was granted its Motion for Summary Judgment on January 12, 1989.

Defendants Delmas Northcutt and Lou Northcutt timely filed an appeal to the Supreme Court of Oklahoma. On February 12, 1991, Division III of the Court of Appeal of the State of Oklahoma affirmed the Decision of the trial court by a 2-1 decision.

In its decision, the Court of Appeals stated:

"There is no doubt raised that appellants, appellee, and the loan in question were all subjects of this law. The Northcutts do not deny that Bank in fact considered their loan for restructuring. Their loan, however, was judged by the Bank's Credit Review Committee not to be worthy of restructuring."

This opinion appeared to overrule the determination by the Trial Court that the provisions of the Agricultural Credit Act did not apply, but the statement of fact was not

found in the Trial Court's Journal Entry and Decree and was totally unfounded in the evidence in the record.

The Court of Appeals further found:

"The statutes requiring good faith participation and mediation, 7 USCS §§5101-5106, do not make it a condition precedent to foreclosure.",

and determined that whether the Bank participated in mediation was not an issue of material fact. The Appellate Court then stated without any basis in the Trial Court judgment or record of evidence below:

"We do note that Bank did submit itself to mediation and attended the first meeting, but that the Northcutts did not pursue mediation."

There was absolutely no evidence before the Trial Court or Appellate Court upon which to make this statement and Petitioners were denied their right to due process under the Fourteenth Amendment.

This action presents issues of first impression before this Court regarding the

rights of borrowers under the Agricultural Credit Act of 1987 and implementation of the Act in the courts of the various states.

RAISING OF FEDERAL QUESTIONS  
IN STATE PROCEEDINGS

This case involves a Summary Judgment entered in foreclosure in a state court. The Federal Land Bank filed the Motion for Summary Judgment on October 5, 1988, after the effective date of the Agricultural Credit Act of 1987 in a foreclosure proceeding subject to said Act. In a timely and direct response to said motion, Petitioners raised the Federal questions sought to be reviewed relating to their rights under the Agricultural Credit Act of 1987. Petitioners specifically alleged that the motion was premature and should not be granted based upon the provisions of the Agricultural Credit Act of 1987 because the Federal Land Bank had not complied with the required provisions relating to restructure and

mediation. A copy of the relevant portions of the Petitioners' Response and Brief in support is printed in Appendix C hereto, infra, page 75. Plaintiffs responded in a Memorandum of Law, and in response Petitioners filed a Supplemental Response further informing the Court as to the legislative history of the Agricultural Credit Act of 1987 and relevant decisions in Federal District Courts as printed in Appendix C hereto, infra, page 76.

The Trial Court in its ruling on the Motion for Summary Judgment on February 14, 1989, found:

"as a matter of law that there is no implied cause of action under the Agricultural Credit Act of 1987, which could entitle the Northcutts to any judicial relief thereunder and there is no genuine issue with respect to any material fact and that judgment should be rendered in favor of FCB [formerly Federal Land Bank]."

Petitioners filed a timely Petition in Error in the Supreme Court of the State of Oklahoma on February 7, 1980, and in Exhibit

"C" thereto set forth the issues and errors proposed to be raised on appeal. Petitioners alleged the Trial Court erred in finding the provisions of the Agricultural Credit Act were not applicable as set forth in Appendix C hereto, infra, page 84.

The issues were fully briefed to the Court of Appeals of the State of Oklahoma, Division III and supplementary authority was submitted as decisions were rendered by Federal Courts pending the Court's decision. See Appendix C hereto, infra at pages 88-92 reflecting the index of the Petitioners' Brief and Reply in the Supreme Court.

The Court of Appeals of the State of Oklahoma, Division III, found by a 2-1 decision in Opinion of February 12, 1991, that the note and mortgage, the parties and the loan in question were subject to the provisions of the Agricultural Credit Act of 1987 relating to restructuring but stated:

"The Northcutts do not deny that the Bank in fact considered their

loan for restructuring."

The Court further stated that:

"The statute requiring good faith participation in mediation, 7 USCS §§5101-5106, do not make it a condition precedent to foreclosure. The trial court held that mediation was not required as a matter of law before the foreclosure could be entered."

And, further stated:

"We do note that Bank did submit itself to mediation and attended the first hearing, but that the Northcutts did not pursue mediation.",

which statements of fact were totally unfounded in the record and are not true.

On March 1, 1991, Petitioners filed a timely Petition for Rehearing with the Court of Appeals of the State of Oklahoma, Division III, setting forth the errors in the Opinion relating to the application of the Agricultural Credit Act of 1987 and the statements and findings of the Trial Court relating to the statements of fact set forth above. A brief in support of the Petition fully setting forth the law was attached

thereto, as printed in Appendix C hereto, infra at page 93.

On April 3, 1991, Respondent's Petition for Rehearing was denied by a 2-1 decision.

Petitioners filed a timely Petition for Certiorari with the Supreme Court of the State of Oklahoma alleging the errors of the Trial Court and Court of Appeals of Oklahoma, Division III, relating to implementation of the Agricultural Credit Act of 1987, and further argued the error of the Court of Appeals in determining questions of fact not established in the Trial Court record. See Appendix C, infra at page 134. On June 5, 1991, the Supreme Court of the State of Oklahoma denied Petitioner's Petition for Certiorari in the Supreme Court of the State of Oklahoma by a 6-3 decision.

The Federal questions were timely and properly raised so as to give this Court jurisdiction to review the judgment on a Writ of Certiorari.



## REASONS FOR GRANTING WRIT

This is a foreclosure action brought by the Federal Land Bank of Wichita filed against defendants who had obtained a loan on the Plaintiff institution secured by a mortgage on their real property. These defendants along with a myriad of other farmers and ranchers were caught in the agricultural crisis resulting in the legislation enacted by Congress as the Agricultural Credit Act of 1987. In enacting this legislation, Congress recognized the national interest in maintaining the American Agricultural System as a viable entity by requiring that Farm Credit System lenders restructure the loans of financially stressed farmer-borrowers in order to help keep farmers on the land and help turn around the condition of the stressed system institution. H.R. Rep. No. 295(I), 100 Cong. 1st Sess. 52. The Farm Credit System was established to improve the income and well-being of American



farmers and ranchers by furnishing sound, adequate, and constructive credit. This Petitioners' loan was acquired by and through the Farm Credit System. On January 6, 1988, the Federal Law was substantially amended in view of the economic stress of the American farmers and a new and definitive system for providing relief to distressed farm and ranch borrowers was established providing borrowers with certain specified Federal rights relating to restructure of their indebtedness. Title 12 USCS §2201 through §2202A were enacted providing specific mandated procedures relating to consideration and reconsideration of the distressed loans for restructuring. As part and parcel of the same legislation, Congress passed 7 USCS §§5101-5106 requiring and mandating that institutions of the Farm Credit System participate in good faith in State Agricultural Loan Mediation Programs.

Title 12 USCS §2202A(b)(3) provides:

"Limitation of foreclosure. No qualified lender [Federal Land Bank] may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this section."

Statutory provisions clearly define the lenders and borrowers subject to the Act, and both parties involved herein come within said definition. The action by the Federal Land Bank and the judgment by State Court on review herein were taken after the effective date of the Act. The actions by the Federal Land Bank in pursuing foreclosure prior to fully complying with the mandated provisions and the judgment by the State Court granting judgment in foreclosure violated Petitioners' private rights granted and established in the Agricultural Credit Act of 1987. The final judgment by the Supreme Court of the State of Oklahoma in denying certiorari to the Court of Appeals denied Petitioners rights and privileges granted under the statutes of the United States.

Division III of the Court of Appeals and the Supreme Court of Oklahoma in affirming the Federal Land Bank's Motion for Summary Judgment failed to accord the Petitioners private rights conferred in the Agricultural Credit Act of 1987. The Congressional intent to create such a private right is the ultimate issue in this case. In the case of Thompson v. Thompson, 484 US 174, 179, 108 Sup.Ct. 513, 516, 98 L.Ed.2d 512 (1988) this Court defined the implied cause of action doctrine and stated:

"In determining whether to infer a private cause of action from a federal statute, our focal point is Congress' intent in enacting the statute. As guides to discerning that intent, we have relied on the four factors set out in Cort v. Ash, 422 US 66, 78, 45 L.Ed.2d 26, 95 Sup.Ct. 2080 [2088] (1975), along with other tools of statutory construction...our focus on congressional intent does not mean that we require evidence that Members of Congress in enacting the statute, actually had in mind the creation of a private cause of action. The implied cause of action doctrine would be a virtual dead letter where limited to correcting drafting errors when

Congress simply forgot to codify its evident intention to provide a cause of action. Rather, as an implied cause of action doctrine suggests, 'The legislative history of a statute that does not expressly create or deny a private remedy will typically be equally silent or ambiguous on the question.' Cannon v. University of Chicago, 441 U.S. 677, 694, 60 L.Ed.2d 560, 99 Sup.Ct. 1946 [1956] (1979). We therefore have recognized that Congress-intent may appear implicitly in the language or structure of the statute, or in the circumstances of its enactment. Transamerica Mortgage Advisors, Inc. v. Lewis, 444 US 11, 18, 62 L.Ed.2d 146, 100 Sup.Ct. 242 [246] (1979).'"

The 1987 Agricultural Credit Act emphasizes that borrowers have the power to initiate certain procedures. The rights enumerated therein include computing the "cost of foreclosure" as provided in 12 USCS § 2202A(a)(2) and computing the cost of restructuring as set forth in 12 USCS § 2202A(e)(2). Section 2202A(e)(1) provides:

"If a qualified lender determines that the potential cost to such qualified lender of restructuring the loan in accordance with a proposed restructuring plan is less than or equal to the potential cost

of foreclosure, the qualified lender shall restructure the loan in accordance with the plan." [Emphasis Added.]

Further, the Federal Land Bank was mandated to develop a restructuring policy to govern the restructuring of stressed loans as set forth in 12 USCS § 2202A(g). Section 2202(d) enumerates a borrower's right to an independent appraisal at the Credit Review Committee stage of a restructuring proceeding and the Federal Land Bank is mandated to consider the results of such an appraisal in any final determination with respect to the loan. Section 2202(e) provides that an applicant for restructuring has a right to be notified in writing of the decision of the Committee and the reasons for the decision. Further, 7 USCS §5501, et sec. of the Agricultural Credit Act of 1987 requires that institutions of the Farm Credit System participate in state mediation programs.

In response to the Federal Land Bank's Motion for Summary Judgment in this action,

Petitioners set forth their private rights under the referenced statutes and factually established that the Petitioners had not been afforded their private rights under the statute because the Federal Land Bank had failed to determine the cost of foreclosure, had failed to compute the cost of restructuring, had failed to determine that the cost of restructuring was less than or equal to the potential cost of foreclosure, had failed to establish a restructuring policy, had failed to furnish Petitioners with written statutory reasons for denial of their loan for restructuring, had failed to give consideration to an independent appraisal, and the Federal Land Bank had failed completely to participate in the State Mediation Program at the time the Motion for Summary Judgment was filed.

The language granting Petitioners these rights in mandating this action by the Federal Land Bank was mandatory rather than

permissive. The lender was directed to follow the statutory procedure. The Federal Land Bank had no discretion in following the exceedingly detailed mandatory procedures. The Act provides in § 2202A(b)(3) that no lender may foreclose or continue any foreclosure proceeding with respect to any distressed loan before the lender has completed any pending consideration of the loan for restructuring under this section.

The detail and precision with which Congress set forth the borrower's rights are powerful indicators that Congress intended to confer specific enforceable rights on the borrowers. If the Federal Land Bank granted the specific rights mandated by the Act, Petitioners acknowledge they are not entitled to a judicial review of the lender's ultimate decision regarding foreclosure or restructuring. However, this Petition involves a System lender which failed to grant these Petitioners the specific Federal



rights mandated by the Agricultural Credit Act of 1987. The Supreme Court of the State of Oklahoma failed to grant these Petitioners their rights under the Legislation.

Congress found it necessary to adopt detailed borrowers rights because Farm Credit System lenders ignored earlier efforts of Congress to encourage restructuring of distressed loans. The language of the Act itself creates the private rights claimed by Petitioners, but the clear language is also supported by the Legislative history of the Act.

The HR Report No. 295(1), 100th Cong. 1st Sess. 52 sets forth the two-fold purpose of the Act. It states:

"HR 3030 will require Farm Credit System lenders to restructure the loans of financially stressed farmer-borrowers in order to help keep farmers on the land and help turn around the condition of the stressed System institutions...Much of the impetus for HR 3030 derives from the continuing depression in agricultural that began in the early 1980's, but whose roots originate in the inflationary



period in the late 60's and 70's."

The Report states that the highlights of HR 3030 include:

"Providing enhanced borrowers rights and requiring restructuring rather than foreclosure of certain loans." Id.

In discussing the testimony of various witnesses to appear before the House Committee, the Report states:

"Dozens of witnesses representing farmer and commodity groups testified before the committee as to two basic weaknesses in the way many system institutions have dealt with its problems. First, system lenders have been exceedingly reluctant to restructure individual loans on a case by case basis; and, second, the tensions and pressures on both borrowers and lenders, brought on by financial distress, have caused collapse of the traditional sense of comity and goodwill between the system and its borrowers/owners." Id. at 62.

The Report went on to state:

"Complaints about the rights of system borrowers being abused at both the association and district levels have been like a constant drumbeat in the offices of some members of Congress for several years. The package of borrowers

rights adopted in HR 3030 reflect a common sense approach which should have been standard operating procedures in a cooperative, borrower-owned lending system." Id. at 64.

All as quoted in the dissent to ZAJAC v. Federal Land Bank of St. Paul, 909 F.2d 1181 (8th Cir. 1990).

In forwarding the Act to the Floor of the Senate, the Senate Committee on Agriculture, Nutrition, and Forestry stated that the Act called "for a major reorganization of the credit delivery mechanism for American Agriculture" to insure economic security for the family farmer and rancher and stability of the Farm Credit System. S. Rep. 230, 100th Cong. 1st Sess. 21 (1987). One of the major elements of this reorganization was the mandated restructuring of distressed loans. This was necessary because system lenders were not restructuring when restructuring was cost effective. Cost effective restructuring helps needy farmers and generates income for the system. The

Senate Report notes that the Senate Bill granted the farmer-borrowers specific rights to insure an accurate determination of whether restructuring was cost effective. The distressed loans of family farmers were required to be restructured if the cost of restructuring was less than the cost of foreclosure. By granting farmer-borrowers certain specific rights, the Senate intended to remedy many of the drastic consequences caused by the agriculture depression of the 1980's, including the tremendous number of foreclosures forcing farm families out of their homes.

Senator Boren (D Oklahoma), the Senate Manager of the Bill, stated upon introduction of the Bill to the Senate Floor:

"All institutions must restructure an eligible borrower's non-accruing loan if: first, it is cheaper to restructure than to foreclose; second, the borrower is applying all income over and above necessary and reasonable living and operating expenses; third, if the borrower has the financial capacity and management skills to protect the

collateral; fourth, if the borrower is capable of working out existing financial difficulties.

. . .

"Borrowers who request an appeal to the Credit Review Committee may also request that an independent appraisal of the collateral securing the loan be conducted. If an independent appraisal is requested, the Committee must consider the results of the independent appraisal in making its final determination on the loan." 133 Congressional Record S16831 (1987).

The 1987 Act was enacted, first and foremost, "to provide credit assistance to farmers". HR Conf.Rep., 100th Cong. 1st 1 (1987). Chairman of the Conference Committee, Representative DeLaGarza of Texas, clearly expressed what Conference Committee thought to be the driving force for enactment of the Act;

"The terrible problem that our farmers and ranchers in rural America have experienced during the past several years, he stated, 'Mr. Speaker, I hope that my colleagues will join us to send the message at this point that we care, but we would like for them to have another tool at their disposal, which is credit of an acceptable nature so

that they could continue providing us with the excellent food and fiber that they have done in the past." 133 Cong.Rec. H11869 (1987)."

Senator McClure (R Idaho), upon the return of the conference report to the Senate and just before final passage of the Act, expressed the sentiment of Congress as follows:

"The most important part of this legislation...is the restructuring of farm loans of financially distressed farmer-borrowers of the system. In order to keep these farmers on the land it is necessary for system banks and associations to change their attitude toward debt restructuring. In the past if a farmer was delinquent or late in payment, it was almost automatic that the Banker Association begin foreclosure or liquidation action. The banks and associations were not focused on helping the farmer through restructuring. With mounting losses, it became clear that doing business as usual would not suffice. A more lenient attitude was needed. Because this was not forthcoming from the system, Congress made restructuring an intrical part of the financial assistance package."

The Act clearly manifests Congress' intent to provide borrowers with the ability

to enforce procedures granted to protect them from unjustified foreclosure. This can only be done by implying a private right of action for borrowers. Implying a private right of action for borrowers to enforce carefully defined procedures mandated by the language of the Act is consistent with the additional goal of the 1987 Act to strengthen and stabilize the Farm Credit System. The Act requires lenders to make cost-effective decisions concerning the possibility of restructuring. Granting borrowers a private right requires lenders to weigh the cost of restructuring against the cost of foreclosure before resorting to the latter. The private relief strengthens rather than weakens the Farm Credit System by requiring lenders to make a decision based on a thorough review of all factors and procedures deemed important by Congress.

When the Bill reached the Floor of the Senate after Committee hearings, Senator

Burdick (D, ND) offered an amendment on the Senate Floor to provide expressly that any person would have the right to sue under the Act. His concern was that the House Bill, which conferred an express cause of action only on borrowers, was too narrow, eliminating existing rights. His concern was that the House provision arguably limited rights under the Act to borrowers of the system. Restricting rights of persons who were not borrowers or who were farmer-borrowers, to sue. He indicated his amendment would restore the right to all persons whether borrowers or not. 133 Cong.Rec. S16995 (Dec.7, 1987). Senator Boren, (D-Oklahoma), Chairman of the Senate Subcommittee on agricultural credit and Floor Manager for the Bill, responded:

"I'm told that the House has unduly restricted the right of the borrower to bring suit and this is the proposal in the House Bill. It would be my thought...that we would oppose that House provision in the Conference Committee. That would have much the same effect as the



adoption of the Burdick amendment would have without our attempting to write the actual language of the amendment here on the Floor at this time."

Senator Luger (R-Indiana), Ranking  
Minority Member of the Senate Agricultural  
Committee stated:

"I would confirm the understanding that the distinguished Senator from Oklahoma and I have with the distinguished author of this amendment. We will in fact oppose the House Amendment in conference. We understand the problem, and we would appreciate the senators not pursuing this amendment on this occasion with that assurance. On the basis of these assurances, Senator Burdick withdrew his amendment and the Bill passed. This language is the best and explicit explanation why the cause of action provision was eliminated at conference.

State courts must recognize the mandated  
private rights of the borrowers because farm  
borrowers have no way to invoke  
administrative remedies. There is no  
procedure for filing charges or complaints.  
This court stated in Cannon v. University of  
Chicago, 441 US 677, 99 Sup.Ct. 1946, 60



L.Ed.2d 560 (1979): "The Supreme Court] has never withheld a private remedy where the statute explicitly confers a benefit on a class of persons and where it does not assure those persons the ability to activate and participate in the administrative process contemplated by the statute."

There is no such assurance in the Agricultural Credit Act.

Further, the record does not support the view that the Farm Credit Administration has either the ability or willingness to enforce the borrowers rights provisions.

Farm borrowers have private rights created by Federal Legislation which must be recognized by the state courts. These rights include requirements that the institutions in the Farm Credit System follow the specific mandates and procedures set forth in the Agricultural Credit Act of 1987. If these provisions are followed and the Credit Review Committee still decides to deny a request to

restructure, the Court should not review the reasonableness of that decision. The Courts must, however, enforce the borrowers rights mandating that the institutions follow the mandatory procedures in reaching their decisions. Congress enacted the Act in the belief that system lenders would act wisely if they complied with the procedures. Petitioners established that the Federal Land Bank did not comply with the procedures, but proceeded with a foreclosure action. The state court granted the request for summary judgment refusing to recognize Petitioners' right under the Federal Statutes.

Petitioners claimed certain rights arising under Acts of Congress. On a Motion for Summary Judgment without an evidentiary hearing, the Trial Court determined that Petitioners had no private rights under the Act involved. The Appellate Court of the State of Oklahoma affirmed the decision of the Trial Court, but in doing so made

findings of fact not determined by the Trial Court and made the findings with no evidentiary basis whatsoever in the record. The Fourteenth Amendment to the United States Constitution provides that no state shall deprive any person of property without due process of law. By making findings of fact with no evidentiary basis in the record whatsoever and affirming the decision of foreclosure, these Petitioners have been deprived of their property without due process of law, which presents a Federal question. Tregea v. Modesto Irrigation District, 164 US 179, 41 L.Ed. 395, 17 Sup. Ct. 52 (1986). To make findings of fact based upon volunteer statements by attorneys not under oath, not a party to the proceeding, which allegations were vehemently denied by the opposing attorney, violates the fundamental principles of judicial justice and due process. An appellate court has no fundamental jurisdiction to make such

findings of fact outside the evidentiary record presented on appeal. Such findings deprived this petitioners of private rights granted under Federal Legislation. To make such a determination violates the due process clause of the 14th Amendment and gives this Court jurisdiction. McDonald v. Oregon R. Navigation Company, 233 US 665, 58 L.Ed. 1145, 34 Sup.Ct. 772 (1914). This issue was not raised in the lower court or in the briefing to the court on appeal because this violation of Petitioners' rights did not occur until the decision by the Court of Appeals was rendered. A Federal question is presented by Petitioners' contention that it rights under the Fourteenth Amendment to the United States Constitution were violated.

WHEREFORE, Petitioners pray that a Writ of Certiorari issue from this Honorable Court to review the judgment of Division III of the Court of Appeals of the State of Oklahoma and the decision of the Supreme Court of the

State of Oklahoma denying certiorari to said Court in Federal Land Bank of Wichita vs. Delmas Northcutt, aka D. L. Northcutt, and Lou Northcutt, aka Martha Northcutt. The substantial Federal questions presented herein afford a basis for review in the Supreme Court of the United States. In the event the petition is granted, Petitioners pray that the judgment of the Court below be reversed, that the cause be remanded, and that the Court below be directed to take no further action in foreclosure until it is established by competent evidence that the Federal Land Bank of Wichita has fully complied with the provisions of the Agricultural Credit Act of 1987.

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